IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.606 OF 2007

Bhausaheb Sheku Nalawade ..Petitioner.

V/s.

Shri Namdev Babanrao Nalawade & Ors. ..Respondents.

Mr.Sanjay Kshirsagar for petitioner.

Mr.Sachin S. Ponde for respondents.

CORAM : ABHAY S.OKA, J.

DATED : 11th APRIL, 2007.

P.C. :-

. Heard advocates appearing for the parties. This petition is under Article 227 of the Constitution of India. The first Appellate Court has allowed the appeal preferred by the respondents (original plaintiffs). By the impugned order, temporary injunction has been granted against the petitioner / defendant restraining him from fetching water from the suit well till the final disposal of the suit.

2. The submission of the learned advocate for the petitioner is that the 7/12 extract of the land Gat No.166 reflects the right of the petitioner to fetch water from the well. It is submitted that there is nothing on record to show that the right which was

available to the petitioners has been taken away in partition between the parties.

3. I have considered the submissions. The Appellate Court has referred to the deed of partition which records that the land bearing Gat No.166 on which the well is situated has been allotted to the share of the respondents' father. The Appellate Court opined that in the partition deed, it is not at all provided that any right is reserved in favour of the petitioner to use the well or to fetch the water from the well.

4. The impugned order is passed on prima facie consideration of the documentary evidence on record.

5. No case is made out for interference with the order passed by the Appellate Court. Writ Petition is dismissed.

6. All contentions of the parties in the pending suit are expressly kept open. The trial Court shall decide the suit without being influenced by this order. Hearing of the suit is expedited.

(ABHAY S. OKA, J.)